

PURCHASE AND CONSULTANT SERVICE AGREEMENT
SD OFFICE OF ATTORNEY GENERAL
AND
ALCOHOL MONITORING SYSTEMS INC

THIS AGREEMENT, made and entered into this 22nd day of _____ June, 2010, by and between the South Dakota Office of Attorney General (hereinafter "Attorney General"), 1302 East Highway 14, Suite 1 Pierre, South Dakota 57501-8501, and ALCOHOL MONITORING SYSTEMS, INC. 1241 West Mineral Ave., Ste. 200 Littleton, Colorado, 80120 (hereinafter "Consultant" or "AMS").

The Attorney General hereby enters into this Agreement with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

I. NATURE OF CONTRACT

- A. In fulfilling the terms of the Agreement it is fully understood and agreed that Consultant is an independent contractor and is not an agent, servant or employee of the Attorney General, the State of South Dakota or any Program Participant. The Attorney General may, from time to time, communicate specific instructions and requests to Consultant concerning the performance of the work which is the subject hereof. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with the Consultant. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the prior written consent of the other party. Consultant will be responsible for all of Consultant's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any. Consultant will provide the Attorney General its federal tax identification number prior to the commencement of the Agreement
- B. The Attorney General enters into this Agreement in reliance upon the representations of the Consultant that it has the necessary expertise and experience to perform its obligations hereunder, and Consultant warrants that it does possess the necessary expertise and experience.
- C. The equipment and services being provided by Consultant are in conjunction with the Attorney General sponsored 24/7 Sobriety Program that is being operated with participating sheriffs' offices and designate law enforcement agencies, the Unified Judicial System, the Board of Pardons and Paroles, the Department of Social Service, Department of Human Services and the Department of Public Safety (hereinafter "Program Participants").

II. SCOPE OF SERVICES

- A. The Consultant shall provide all of the equipment, services and support functions set forth herein and in Exhibits A, B, and C (attached hereto and incorporated herein).
- B. The Attorney General agrees to notify Consultant of all current and future Program Participants and provide Consultant with such information as Consultant may require in order to perform the services and the provide equipment under this Agreement.

- C. The Attorney General agrees to limit requests for access to the SCRAM Network to authorized employees of the Attorney General, Program Participants and their authorized consultants that need to know the information residing on the SCRAM Network.
- D. Consultant will provide a user ID and private password to access data stored on the SCRAM Network private website. Such user IDs and passwords must be protected as Confidential Information of Consultant. The Attorney General and Program Participants shall not allow the sharing of user IDs or passwords with other employees or third parties.
- E. The Attorney General and/or Program Participants shall promptly provide written notice to Consultant if any previously authorized person's status changes, such that access should no longer be allowed (e.g. reassignment of the employee to work which is unrelated to the Attorney General or Program Participant's alcohol monitoring program); but in any event, the Attorney General's Office and/or Program Participants shall notify Consultant within ten (10) business days of the termination or resignation of any employee who had access to the SCRAM Network. These requirements are subject to change based on reasonable review by Consultant and Attorney General of information security needs.
- F. The Attorney General and/or Program Participants are responsible for procuring "front-end" communications connection linking its computers or network to the internet, including all telecommunications equipment and connections.
- G. No party shall be in default under this Agreement by reason of its delay in the performance of, or failure to perform, any of its obligations under this Agreement, if, and to the extent that, such delay or failure is caused by generalized disruption of the Internet, break-downs of security or introduction of computer viruses (and the like) by third parties, strikes, wars, natural disasters, acts of the public enemy, government restrictions or acts of terrorism. Upon claiming any excuse or delay under this Section, such party shall promptly notify the other party, use reasonable efforts to remove the cause and continue its performance under this Agreement whenever the cause is removed
- H. For purpose of this Agreement the term "Scram Bracelet" shall include the original SCRAM and SCRAM II Bracelets previously purchased and upgraded by the Attorney General and Program Participants that were and are in service and the SCRAMx Bracelets. For purposes of this Agreement, "SCRAM Network" shall refer to the SCRAM X Network or SCRAMNet. SCRAMx bracelets and base stations, direct connect and or modems remotely monitor blood alcohol levels of the Participant. The SCRAM Bracelets and SCRAM Network will not be used by the Attorney General or Program Participants under this Agreement to monitor the presence or absence of a participant from a specified location.

III. CONFIDENTIALTY

- A. Consultant agrees that it will not discuss or disclose any information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the Attorney General. The Consultant understands that in performing services under this Agreement its personnel will have access to information regarding individuals wearing the SCRAM Bracelets that is confidential under state law. In addition Consultant agrees: to abide by such state law requiring confidentiality; insure that every employee who will have access to the confidential

information will be under an contractual obligation of nondisclosure at least as stringent as that required by state law; and to limit access of any confidential information to those employees who have a need to know and who have been instructed that such information is confidential under state law.

- B. The information maintained by Consultant that is collected from SCRAM Bracelets purchased or used under this Agreement is the property of the Attorney General and Program Participant that issued the bracelet. Upon termination of this Agreement, Consultant agrees to provide the Attorney General with all information maintained by Consultant from SCRAM Bracelets purchased or used under this Agreement. The Attorney General may provide this information to requesting Program Participants and authorized consultants. The provisions of this section and any confidentiality agreement executed hereunder survive the termination of this Agreement.
- C. Consultant shall have the right to issue news releases, press releases or other communications regarding this Agreement to potential investors or to other persons who may desire to understand Consultant's ability to provide SCRAM Units and services with respect to alcohol monitoring programs. However, Consultant shall not disclose any names of Program Participants and names or other personal identification information of SCRAM Bracelet users without the prior written approval of Attorney General and Program Participant.
- D. In connection with this Agreement a party ("Discloser") may furnish to the other party ("Recipient") software, data, designs, drawings, tracings, plans, layouts, specifications, samples, equipment and other information provided by or on behalf of Discloser to Recipient, that should reasonably have been understood by Recipient, because of legends or other markings, to be proprietary and confidential to Discloser ("Confidential Information"). Confidential Information also includes information that, due to either the circumstance of disclosure or the nature of the information itself, would put a reasonable recipient on notice as to its potential confidential nature. Confidential Information may be disclosed in written or other tangible form (including digital or other electronic media) or by oral, visual or other means. Each party agrees not to disclose to the other party any confidential or proprietary information of third parties unless authorized to do so.
- E. It is agreed that, except as provided in paragraph III G, after receipt of Confidential Information of the other party, Recipient shall: (i) restrict the dissemination of such Confidential Information to those employees and consultants who need to use the Confidential Information in the performance of this Agreement, and (ii) use the same degree of care as for its own information of like importance, but no less than a reasonable standard of care, in safeguarding against unauthorized disclosure of such Confidential Information.
- F. Confidential Information shall not include information that: (i) is or becomes part of the public domain without violation of this Agreement by Recipient, (ii) is already in Recipient's possession free of any restriction on use or disclosure, (iii) becomes available to Recipient from a third party provided that such party was free from restriction on disclosure of the information or (iv) has been independently developed by Recipient. Further, Confidential Information shall not include this Agreement or any exhibits hereto.
- G. Consultant understands that the Attorney General and Program Participants ability to maintain documents and information confidential is subject to the "open records" provisions in SDCL ch. 1-27 as may be amended from time to time. As such, if a Recipient is required by legal

proceeding discovery request, "open records" or equivalent request, investigative demand, subpoena, court or government order to disclose Confidential Information, Recipient may disclose such Confidential Information provided that: (i) the disclosure is limited to the extent and purpose legally required; and (ii) prior to any disclosure, Recipient shall immediately notify Discloser in writing of the existence, terms and conditions of the required disclosure and, to delay production of the confidential information for a reasonable period to allow, at Discloser's request and expense time to obtain protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

IV. TIME OF PERFORMANCE AND RENEWAL OPTION

- A. The Agreement will run for a one year term from July 1, 2010, through June 30, 2011. The Attorney General has the option, in the exercise of his sole discretion, to renew the Agreement for two additional 12 month periods by providing Consultant with a notice of renewal prior to the completion of the then existing term. Unless otherwise mutually agreed by the parties, the terms of any renewal will be identical to the then existing Agreement between the parties.
- B. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the Attorney General without further financial obligation or liability to Consultant other than to pay for equipment, services and support functions previously delivered to the Attorney General or performed for the Attorney General. Subject to the foregoing obligation of payment, termination for any of these reasons under this paragraph is not a default by the Attorney General nor does it give rise to a claim against the Attorney General.

V. COMPENSATION

The Attorney General shall pay the Consultant for goods and services in a TOTAL CONTRACT AMOUNT not to exceed \$600,000 for the current initial contract term. The amount due Consultant will be computed according to Exhibit C attached hereto. Requests for payment of items purchased by the Attorney General will be submitted with delivery pursuant to itemized invoices and a signed state voucher. Requests for payment for services will be made monthly pursuant to itemized invoices in a style and form agreed to by the parties and submitted with a signed state voucher. Any additional or differing terms on any state voucher shall not alter or amend the terms of this Agreement. Payments for purchases and services will be made by the Attorney General in accordance with SDCL ch. 5-26. The Consultant shall not be reimbursed for travel, lodging or other expenses incurred in the performance of this Agreement unless agreed to by the Attorney General.

VI. TERMINATION OF CONSULTANT'S SERVICES

It is specifically understood that the nature of the services to be rendered under this Agreement are of such a personal nature that the Attorney General is the sole judge of the adequacy of such services. The Attorney General thus reserves the right to terminate this Agreement should the Attorney General at any time be dissatisfied with Consultant's performance of its duties under this Agreement.

The Attorney General may, at any time prior to the Agreement's term, terminate this Agreement without cause by giving thirty (30) days prior written notice to the Consultant and terminate for cause at any time, with or without notice. Consultant may terminate this Agreement upon 120 days prior written notice to the Attorney General. The Consultant shall be paid for services rendered up to the date of termination and equipment delivered prior to the date of the notice, less any payments previously made, provided the Consultant has supported all payments requests as provided in the Agreement.

Upon payment as specified herein, Consultant shall deliver to the Attorney General all information, work products and documents which have been stored, maintained or prepared by Consultant in the course of providing services under this Agreement. All such materials shall become and remain the property of the Attorney General, to be used in such manner and for such purpose as the Attorney General may choose. The Consultant agrees to waive any right to and shall make no claim for additional compensation against the Attorney General by reason of such termination.

In the event of termination, all provisions of this Agreement relating to "confidentiality" shall remain binding upon both parties

VII. RECORDS AND AUDITING

Consultant agrees to maintain all records that are pertinent to this Agreement for a period of three years following termination and final payment. These records shall be subject at all reasonable times for inspection, review, or audit by the Attorney General, state of South Dakota, other personnel duly authorized by the state of South Dakota, and Federal officials so authorized by law.

VIII. RIGHTS IN DATA AND COPYRIGHTS PUBLIC USE

Except to the extent that it is or incorporates a pre-existing work of Consultant in a verifiable form, all reports, documents, SCRAM Bracelet user data and information produced as a result of the services rendered under this Agreement will become the property of the Attorney General and/or Program Participants. To the extent that any pre-existing work is or is made a part of any deliverable, it is not subject to the ownership provisions of the preceding sentence. Consultant shall retain all ownership rights in such pre-existing work but will grant to the Attorney General and Program Participants an irrevocable, worldwide, non-exclusive, royalty-free license to use any such pre-existing work for the term of this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Consultant by the Attorney General shall be subject to copyright by Consultant in the United States or any other country. However, Consultant shall be free to use within the scope of its business, any general ideas, concepts, know-how, techniques, skills, knowledge and experience that are used or developed by it during the course of performing its obligations under this Agreement.

IX. LIABILITY

Consultant agrees to hold harmless and indemnify the Attorney General, Program Participants, State of South Dakota, and their officers, agents, and employees, from and against any and all actions, suits, damages, liability, or other proceedings, which may arise as a result of Consultant's, its directors', officers', employees', agents' or subcontractors' negligence, recklessness or willful misconduct while performing services hereunder or which arise as a result of a breach by Consultant of the terms of this Agreement. This section does not require Consultant to be

responsible for or defend against any portion of claims or damages which arise arising solely from acts or omissions of the Attorney General, Program Participants, State of South Dakota, their officers, agents, or employees as allowable by State law. Consultant shall bear all costs associated with defending against any claims. The Attorney General will give Consultant relevant information, reasonable assistance, and the sole authority to defend or settle a third party claim, provided that (a) the Attorney General will be permitted to join in the defense and settlement of such claim at its own expense and (b) any settlement includes an unconditional release of the Attorney General, Program Participants, State of South Dakota, and their officers, agents, and employees (to the extent they are named as defendants) from all liability arising out of such proceeding. These terms are applied as allowable by State law.

EXCEPT AS PROVIDED IN THE PRECEEDING PARAGRAPH REGARDING CONSULTANT'S OBLIGATION TO HOLD HARMLESS AND INDEMNIFY FOR THIRD PARTY CLAIMS, UNDER NO CIRCUMSTANCES SHALL A PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, (OR USE THEREOF), OR BUSINESS INTERRUPTION ARISING OUT OF ANY ACTS OR FAILURES TO ACT, WHETHER SUCH DAMAGES ARE LABELED IN STRICT LIABILITY, TORT, CONTRACT, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The limitations set forth in this paragraph shall apply even if any remedy in this Agreement fails of its essential purpose. The allocation of liability in this paragraph represents the agreed and bargained for understanding of the parties and each party's compensation hereunder reflects such allocations.

X INSURANCE

A. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

XI. COMPLIANCE WITH LAWS

Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements. Consultant

agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Title VI or the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Age Discrimination Act of 1975 and Americans with Disabilities Act of 1990.

XII. ANTITRUST ASSIGNMENT

The Consultant hereby agrees to convey, assign and transfer to the State of South Dakota all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States, 15 U.S.C.A. §1, et seq. (1973), and under the antitrust laws of the State of South Dakota, SDCL ch. 37-1, and amendments thereto, relating to the particular goods, services and materials purchased by the Attorney General in connection with this Agreement.

XIII. GENERAL PROVISIONS

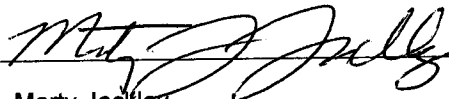
- A. This Agreement and the documents incorporated herein represent contain the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- B. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota. In any litigation in which the parties are adverse, the parties agree to waive their respective rights to a trial by jury.
- C. Any notice or other communication required under this Agreement shall be in writing and sent to the appropriate address set forth above. Notices shall be given by and to the Attorney General on behalf of the Attorney General, and by and to Don White on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
- D. The headings in this Agreement have been inserted for convenient reference and shall not be considered in any questions of interpretation or construction of this Agreement.
- E. The provisions of this Agreement are severable and independent, and if any such provision shall be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision, to the extent enforceable in any jurisdiction, shall, nevertheless, be binding and enforceable.
- F. Neither this Agreement nor any rights hereunder may be assigned or transferred in whole or in part by either party, without the prior written consent of the other party, but not including situations arising from a merger or acquisition of the Consultant by a third party. This consent will not be unreasonably withheld.

- G. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- H. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, corporation or other entity, other than the parties thereto, the Program Participants, and their successors in interest and assigns, any rights or remedies under or by reason of that contract.
- I. This Agreement is not binding upon the Attorney General unless executed in full.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

Alcohol Monitoring Services, Inc.

By:



Name:

Marty Jackley

Title:

Attorney General

Date:

6/22/10

South Dakota Attorney General's Office
G.S. Mickleson Criminal Justice Center
1302 East Highway 14
Pierre, South Dakota, 57501

By:



Name:

Don White

Title:

Chief Operating Officer

Date:

6/21/2010

ALCOHOL MONITORING
SYSTEMS, INC.
1241 West Mineral Ave. Ste 200
Littleton Colorado, 80120

EXHIBIT A

1. Consultant shall provide the Attorney General with SCRAM II and SCRAMx Hardware Kits (SCRAM Units) and components for dissemination to Program Participants. As outlined on Exhibit C, the SCRAM Unit will include one (1) SCRAM II or SCRAMx Bracelet, one (1) battery/faceplate kit and one (1) modem kit (one (1) modem, one (1) phone cord, and one (1) modem power supply cord) or one (1) base station kit (one (1) base station, one (1) phone cord, one (1) modem power supply and cord. In lieu of the modem kit at the Attorney General's request Consultant will supply one (1) direct connect kit (one (1) direct connect device, one (1) USB cable and one (1) direct connect quick guide). The cost of the direct connect kit is set forth in Exhibit C. The Consultant will also make available for purchase the individual components of the SCRAM II Hardware Kit and direct connect kit. Prices for the components are set forth in Exhibit C. In addition Consultant will supply the Attorney General with a monthly allotment of consumables based on program participants current utilization rates at no cost with replacement, straps (including SCRAMx Size 2 straps) battery packs, removal tools and tamper clips to service the outstanding SCRAM Units as part of its warranty responsibilities The Consultant will also make available for purchase the individual components of the Base Station Kit. Prices for the components are set forth in Exhibit C.
2. Consultant shall provide the Attorney General and Program Participants with the services and support functions set forth herein. The Services shall consist of: (i) the remote collection and compilation of reports and data from the SCRAM Units (including those with SCRAM Bracelets) via the SCRAM Network; (ii) the provision of training and certifications for Attorney General and Program Participant personnel as specified in Exhibit C to this Agreement; (iii) the provision of technical support and telephone assistance from Consultant's professionals; (iv) the scheduled maintenance of the SCRAM Units; (v) the provision of reasonable disaster recovery and backup Services for data stored on the SCRAM Network; (vi) the providing of legal documentation and expert "data interpretation and analysis" testimony for legal proceedings as deemed necessary by the Attorney General, (vi) the providing of timely notice of Tamper Alerts and Positive Alerts to all applicable Attorney General and Program Participants' personnel; and (vii) the provision of such other Services and support functions as may be agreed to by the parties and described in Exhibit B. Consultant's sole compensation for providing these services is the Daily SCRAM Service and Access Fee for each SCRAM Unit that is placed into service at the rate set forth in Exhibit C. For purpose of this Agreement "SCRAMNet Alerts" mean alerts labeled as follows: Positive Alcohol Detected, Tamper, Removal, Communication, Maintenance and other system related messages specific to electronic monitoring.
3. SCRAM Unit Maintenance. As a part of the Services and consistent with its warranty, Consultant, at no additional cost, will provide for the maintenance of SCRAM Units to insure that they will remain in good repair and working order and will continue to meet or exceed published specifications. Prior to the scheduled maintenance, Consultant will provide the affected Program Participant with a

temporary replacement to be utilized in the interim. Notwithstanding the foregoing, the maintenance program shall not cover SCRAM Units damaged or rendered inoperative for any cause not due to defects covered by warranty. The Program Participants and Attorney General's Office shall not, without prior approval from Consultant, send to Consultant for maintenance any SCRAM Units not then scheduled for maintenance. All returns for maintenance shall be accompanied by a Returned Merchandise Authorization Number obtained prior to shipment.

4. **SCRAM Product Development.** The Consultant agrees to replace all SCRAM Bracelet previously purchased from Consultant that are still in use by the Attorney General with a SCRAMx Bracelet at no additional charge. All SCRAMII Bracelets will be replaced with SCRAMx Bracelets by January 1, 2011. If Consultant determine to no longer support modems previously purchased by the Attorney General, Consultant will provide the Attorney General with Base Station Kits at no additional charge to replace modem kits outstanding. If Consultant acquires or develops new products that perform the functions of the SCRAM Units, the Consultant may elect to replace of all or a portion of the SCRAMx Bracelets then in use by the Attorney General with the new product(s) at no additional charge to the Attorney General.
5. **SCRAM Network Services.** Under the terms specified in this Agreement, Consultant will provide web-based access to the SCRAM Network by the Attorney General's Office and Program Participants on a twenty-four (24) hours per day, 365 days per year basis. The Attorney General and Program Participants will have access via a toll free telephone from anywhere in the continental United States for both the uploading of information from the SCRAM Modem, SCRAM Base Station or SCRAM direct connect device to the SCRAM Network and for direct access by the Attorney General and Program Participants to the SCRAM Network. CONSULTANT will also provide regular off-site data storage and backup Services for the Attorney General and Program Participants. Upon termination of this Agreement, all information identifying SCRAM Bracelet users and all user data shall be purged from the SCRAM Network and any CONSULTANT data storage records.
6. **Access to SCRAM Network.** In consideration of the payment of the Daily SCRAM Services and Access Fee described herein and subject to the terms and restrictions set forth below, Consultant grants the Attorney General and all Program Participants limited, nonexclusive right to access the SCRAM Network for the purposes of monitoring data obtained from the Units purchased under the Agreement.

Consultant will use reasonable efforts to prevent unauthorized access to restricted areas of its servers and any databases or other material generated from or used in conjunction with the SCRAM Network. Further, while it is Consultant's intent that access be available at all times, Consultant does not warrant uninterrupted or error-free operation of the SCRAM Network. Lack of access to the SCRAM Network shall not be a breach of the Agreement if it is due to (i) scheduled downtime, (ii) reasonable needs for maintenance, (iii) reasonable periods for failure of equipment,

computer programs, or communications, or (iv) other events reasonably beyond the control of Consultant and Consultant exercises such commercially reasonable efforts to restore access as circumstances require.

7. **Improper Use of SCRAM Units or Network.** Consultant reserves the right to deactivate or suspend access to the SCRAM Network by a user if such user is found or reasonably suspected to be using his/her access to facilitate illegal, abusive or unethical activities. Such activities include pornography, obscenity, violations of law or privacy, hacking, computer viruses, or any harassing or harmful materials or uses. The Attorney General and Program Participants agree to release Consultant from liability for any claims resulting from such use or for any unlawful disclosure or use of SCRAM Unit user data by Program Participants or Attorney General users. Consultant agrees to notify the Attorney General prior to any deactivation or suspension and cooperate with the Attorney General to ensure that such deactivation does not affect the services provided under the Agreement to any Program Participant.
8. **Additional or Changed Services at Consultant's Initiative.** From time to time, Consultant may revise the scope of the Services or make substitutions, additions, modifications and improvements to the SCRAM Network, provided that the resulting Services remain at least as effective as specified in the SCRAM System Users Manual.

Additionally, as a part of these changed Services, Consultant may from time to time, at its own expense, install additional machinery, equipment, and other personal property at the Program Participant sites. All such machinery, equipment, and other personal property shall remain the sole property of Consultant and Consultant may remove the same from Program Participants at any time, provided, that any damage to property resulting from such removal shall be repaired by Consultant.

9. **Services Not Covered.** Consultant shall not be responsible for providing product and services not explicitly provided for in this Agreement, including but not limited to, developing and implementing individualized alcohol abuse treatment plans and/or case management program or implementing procedures to respond to Alcohol Detection and Tampering Detection Alerts.
10. **Program Participant Notification.** Each Program Participant is solely responsible for notifying in writing any person wearing a SCRAM Bracelet of any restrictions or limitations on the use of the SCRAM Bracelets of which it is made aware by Consultant, including but not limited to banned products, prohibitions on tampering, health risk warnings, and swimming, bathing and personnel hygiene restrictions. An example of a written notification is attached as Exhibit D (the "Participant Agreement"). The form participation agreement setting forth the restrictions and limitations on the use of SCRAM Bracelets is also available to Program Participants are also available on the SCRAMNet. Consultant agrees to provide the Attorney General and Program Participants with prior notice of any change or modification of

the restrictions and limitations set forth in the form participation agreement to allow time to incorporate the change or modification in their forms and information provided participants. The form participant agreement attached in Exhibit D and set forth on the SCRAMNet is an example only, is not intended to cover all possible requirements of the relationship between the Program Participant and the SCRAM Bracelet wearer, and should be reviewed and modified by the Program Participants legal advisors prior to use.

11. Warranty. When installed according to instructions, Consultant warrants to Attorney General and Program Participants that the SCRAM Units will function with the SCRAM Network substantially in accordance with the performance parameters specified in the SCRAM Daily Operations Guide. This warranty shall remain in effect from the date of delivery for each SCRAM Unit, provided that Consultant is paid the Daily SCRAM Services and Access Fee ("Warranty Period"). The SCRAM equipment is not designed to give immediate notification of alcohol detection and Consultant makes no assurances that the SCRAM Unit will detect all tamper efforts. This warranty will survive termination of this Agreement.

If Consultant is unable to repair or replace the SCRAM Units, Consultant shall refund (i) an amount equal to the original purchase price paid for the SCRAM Unit, less an amount equal to the depreciated amount that has been pro-rated on a monthly basis over sixty (60) months from date of purchase, as well as (ii) any Daily SCRAM Services and Access Fees paid by the Attorney General's Office or Program Participants to Consultant from the time of failure of the affected SCRAM Unit.

12. Exclusions from Warranty. The above warranty does not cover SCRAM Units that are defective due to improper use or installation, damage, accident, abuse or alteration. In the event of a breach of the above warranty, Consultant will, at its sole option, repair or replace the defective SCRAM Unit. Repairs and replacement of SCRAM Units not covered by warranty will be billed at the rates outlined in Exhibit C.
13. Responsibilities for Out of Service Units: If a SCRAM Unit is out of service for repair, or replacement, Consultant shall deliver, within a reasonable period that a SCRAM Unit is out of service, a replacement and/or repair parts to the Attorney General or applicable Program Participant. Consultant shall bear all associated cost and expenses, including delivery charges, where the repair or replacement is covered by Consultant's warranty. The Consultant may bill the Attorney General the costs and associated expenses for non-warranty repair or replacement at the rate set forth in Exhibit C, together with the actual costs associated with delivery. Consultant shall not charge a Daily SCRAM Services and Access Fee while a SCRAM Unit is out of Service.

AMS will provide to Attorney General a ten percent (10%) reserve SCRAM Unit inventory rounded up to the next unit (e.g. 10% of 25 Units—3 Units for inventory) to be dispersed to identified Program Participants to be used when equipment is

removed from service for repair or maintenance. If the Attorney General elects to use put this inventory into permanent service, AMS reserves the right to invoice Attorney General for the purchase of the SCRAM Units and applicable daily service fees.

14. Delivery Terms. All SCRAM Units purchased by the Attorney General shall be delivered to 1302 East Highway 14, Suite 1 Pierre, South Dakota 57501-8501 at Consultant's expense. The Attorney General and Consultant may agree on alternative delivery terms so that SCRAM Units are delivered directly to Program Participants.
15. Training and Certification. Consultant will provide Attorney General's Office and Program Participants with personnel training and certification in the use of SCRAMNet for the aggregate number of hours set forth in Exhibit C. Consultant will provide the Attorney General's Office and Program Participants access to a reasonable number of copies of its SCRAMx Daily System's Operations Guide and the required training curriculum and syllabus. Any travel, lodging and reasonable expenses incurred by Consultant personnel for purposes of training and personnel certification will be paid by the Consultant. Site visits by Consultant is not considered as training under this Agreement.
16. Additional Responsibilities. Consultant shall not be responsible or liable for product and services not explicitly provided for in this Agreement, including but not limited to third party infrastructure or services, such as communication systems, which may be subject to latency and/or service interruptions, or a participant's failure to adhere to a participant agreement. The Attorney General's Office and Program Participants shall be solely responsible for the management and supervision of the SCRAM equipment and any personnel utilizing the SCRAM equipment and SCRAMNet, as well as the selection and implementation of the Participant enrollment, monitoring and notification options provided for in SCRAMNet. The Attorney General's Office and Program Participants are solely responsible for the management of the Participants, including the response to any Participant violations reported by Consultant. Consultant is not responsible or liable for the Attorney General's Office or Program Participant's failure to properly fulfill its foregoing responsibilities.

EXHIBIT B

Roles and Responsibilities	AMS	Program Participant
<u>Program Set-Up</u>		
Identify Program Manager/dedicated resource for implementation of SCRAM Program.		X
Introduce and define the roles and responsibilities of the Customer Services Manager to the customer.	X	
Conduct the Sales to Service Handoff On Site Meeting.	X	
Review the AMS organization chart with the customer and explain the chain and methods of communication that should be used within the organization.	X	
Ensure that the Program Manager/Administrator receives Level 1 Training.	X	X
Review the Daily Operations Guide and the components necessary for a successful program implementation.	X	X
Ensure that the SCRAM Program is set up based on process and procedure guidelines in the Daily Operations Guide.		X
Provide the Program Manager/Administrator with access to SCRAMNET in order to view reports.	X	
Provide a minimum of one dedicated analog phone line for SCRAM equipment set-up at each location.		X
<u>Data Interpretation and Analysis</u>		
Provide client management support on a daily basis for SCRAM Program participants.		X
Provide technical support for customers on a daily basis, seven days a week and emergency support on holidays.	X	
Manage the SCRAMNET environment, including daily data collection, backup, and storage.	X	
Review and resolve all Scheduled Maintenance alerts.		X

Review and resolve all Communications alerts.		X
Review all Tamper alerts. Request AMS confirmation of alert as warranted.	X	
Provide final tamper analysis and confirmation.	X	
Review all Alcohol Detected alerts. Request AMS confirmation of alert as warranted.	X	
Provide final confirmation of Alcohol Detected alerts.	X	
Review all Equipment alerts. Resolve and notify customer of required action and authorization to return if necessary.	X	
Consolidate workload for customer and prepare a Daily Action Plan for immediate customer follow up by 10 AM.	X (Monday-Friday only)	
Prepare reporting for confirmed drinking or tamper events by generating a Violation Report.	X (Upon request & as needed)	X
Assist customer in generating reports for client and inventory management.	X (Upon request & as needed)	
Provide legal documentation and expert testimony for legal proceedings as deemed necessary at the current fee.	X (Upon receipt by AMS of a Request for Testimony form & as needed)	
<u>Client Management</u>		
Review terms of Program Participant Agreement with client and retain signed copy of agreement.		X
Manage client/offender billing and collection process.		X
Provide all notification and follow up with customers and client/offender based on the Daily Action Plan provided by AMS or own action plan.		X

Follow up with appropriate authority (probation, courts, etc) based on confirmed violations.		X
Ensure complete enrollment/data entry for all clients in SCRAMNET.		X
<u>Inventory Management</u>		
Maintain inventory/physical control of all SCRAM equipment by conducting physical inventories on a regular basis.		X
Change SCRAM batteries as required.		X
Perform all client equipment set-up, removal, and disinfecting.		X
Review status of the Current Inventory Report and follow up as needed on equipment that should be replaced or equipment that is lost or stolen.	X (Jointly)	X (Jointly)
Monitor and maintain customer reserve-inventory levels and monthly battery allocations.	X	
Provide periodic service and extended-warranty support.	X	

EXHIBIT C

1. SCRAM Units Purchase Price and delivery schedule

SCRAMII unit price will be \$1330.00 which includes with a Base Station Kit or Modem Kit. . SCRAM x SUnit price wich includes SCRAM x Unit and Base Station Kit or Modem Kit will be \$1,330.00 or \$1,390 if a direct connect kit is included with SCRAM X set

- * SCRAM Unit will include one (1) SCRAM Bracelet, one (1) SCRAM battery/faceplate kit two (2) batteries, two (2) cover latches, two (2) securing screws
- * SCRAM Base Station Kit will include one (1) Base Station, one (1) phone cord, one (1) modem power supply and cord
- * SCRAM Modem Kit will include one (1) Modem, one (1) phone cord, one (1) modem power supply and cord
- * SCRAM Direct Connect Kit one (1) direct connect device, one (1) USB cable and one (1) direct connect guide

2. Daily SCRAM Services and Access Fees as of Effective Date:

SCRAM Daily Service and Access Fee rate:

1 - 149 units = \$4.30/day

150+ units = \$3.80/day

Monitoring Fees will be charged when a Unit is activated and placed in service. AG Office is responsible for additional billing days if the equipment is not properly deactivated.

3. SCRAM Set Replacement and Repair Rates (Non Warranty Replacement or Repairs)

Replacement Rates

SCRAMx Bracelet	=	\$1,080.00
Battery/faceplate kit	=	\$8.00
Modem	=	\$400.00
Base Station	=	\$400.00
Phone cord	=	\$3.00
Modem Power Supply	=	\$40.00
Strap Replacement Kit	=	\$15.00
Direct Connect Kit	=	\$60.00

UBS Cable	=	\$45.00
Direct Connect Guide	=	\$45.00

Repair Rates

Front Strap	=	\$50.00
Back Strap	=	\$125.00
Bracelet Submersion	=	\$340.00

4. **Hours of AMS training and consulting provided to Agency at No Charge**
 At AMS location -20 hours per 12 month period
 At Attorney General designated locations – 20 hours per twelve month period
5. **Payment Terms for Parts and Accessories:**
 Payment due for SCRAM parts and accessories will be in accordance with SDCL ch. 5-26.
6. **Payment Terms for SCRAM Services:**
 Payment due for SCRAM Services will be in accordance with SDCL ch. 5-26.

1 STATE OF SOUTH DAKOTA)) COUNTY OF _____) STATE OF SOUTH DAKOTA,)) Plaintiff) vs.)) _____,) Defendant.)	Exhibit D IN CIRCUIT COURT _____ JUDICIAL CIRCUIT File No. _____ 24/7 Sobriety Program Participation Agreement Electronic Alcohol Monitor Testing (SCRAM)
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I, _____, have agreed to my placement in the 24/7 Sobriety Program and electronic alcohol monitor testing by the Secure Continuous Remote Alcohol Monitoring™ ("SCRAM") equipment.

As a condition of being placed in this Program, I agree to strictly comply with all Program requirements set forth in this Agreement, the placement order or directive, and to follow the instructions of my court service officer, parole agent or law enforcement representative (hereinafter referred to as "Contact Person"). I further agree to assist in my enrollment in the 24/7 Sobriety Program and execute all documents that are part of the enrollment process.

I agree to all terms and conditions regarding the SCRAM equipment provided to me. I agree to wear the SCRAM Bracelet on my ankle for the duration of my participation in the Program and agree that the SCRAM Modem shall be connected to my home telephone or, if I have no home phone service, at a location approved by my Contact Person. I understand that the SCRAM Bracelet will, at pre-programmed intervals, test me for the presence of a blood alcohol concentration that is emitted as vapors through my skin. When the SCRAM Bracelet detects the presence of ethanol, it will record a positive reading and will transmit an alcohol alert to the SCRAM Modem. The SCRAM Bracelet also contains systems designed to detect interference or tampering and will also transmit

a tampering alert to the SCRAM Modem. I understand that tampering with the SCRAM equipment, placement of material between the SCRAM bracelet and my skin, or any other interference with the taking of SCRAM samples and download of information will constitute a violation of this Agreement.

Reporting Schedule: I understand that my daily SCRAM equipment reporting times are as follows:

Reporting Time 1 _____
Reporting Time 2 _____
Reporting Time 3 _____
Reporting Time 4 _____
Reporting Time 5 _____
Reporting Time 6 _____

I understand the maximum SCRAM Bracelet range is 20 feet from the SCRAM Modem. I agree to be proximate (within 20 feet) of my SCRAM Modem for 15 minutes prior to each of the above designated reporting times. I will not leave SCRAM Modem range while the green light is blinking.

I agree to maintain, at my expense, an analog telephone line and electrical service in my residence or other location approved by my Contact Person, for purposes of connecting the SCRAM Modem. I agree that I will not make any changes in the telephone equipment or services at my residence or other approved location without prior approval of my Contact Person. If notified by my Contact Person, I agree to remove any telephone features or functions that interfere with normal operation of the SCRAM Modem. I agree to provide copies of the monthly telephone and electric bills relating to the place where the SCRAM Modem is located, when requested by my Contact Person.

I acknowledge receipt of SCRAM Bracelet number _____ and SCRAM Modem number _____. I understand that I am required to pay a \$6.00 fee for each day I wear the SCRAM Bracelet and \$30.00 fees for both activation and deactivation. I agree to pay the fees in advance and as instructed by my Contact Person, and will submit fee payments to the Clerk of Courts in the above-captioned county or as stated in the directive. I also understand that I will be held responsible for any repair or replacement costs for loss or damage to SCRAM equipment assigned to me that is not due to normal use. These replacement costs are as follows:

- | | |
|---|------------|
| <input type="checkbox"/> Full replacement of the SCRAM Bracelet | \$1,200.00 |
| <input type="checkbox"/> Full replacement of the SCRAM Modem | \$ 400.00 |
| <input type="checkbox"/> Battery pack replacement | \$ 8.00 |
| <input type="checkbox"/> Phone Cord | \$ 3.00 |
| <input type="checkbox"/> Modem power supply | \$ 40.00 |

- | | |
|---|-----------|
| <input type="checkbox"/> Strap replacement kit | \$ 15.00 |
| <input type="checkbox"/> SCRAM Bracelet Submersion repair | \$ 340.00 |

I agree to allow my assigned Contact Person or their designee the right to inspect and maintain the SCRAM Bracelet and SCRAM Modem and further agree to meet my assigned Contact Person or designee at the time and place requested for this purpose.

I understand that, except for an emergency, the SCRAM Bracelet may be removed only with the permission of my Contact Person. In an emergency, removal of the SCRAM Bracelet may be accomplished by cutting the front strap where indicated by the words 'Cut Here'. I agree to immediately report any emergency removal of the SCRAM Bracelet to my Contact Person. I further agree to not move, disconnect, or tamper with the SCRAM Modem without the prior approval of my Contact Person.

If I experience problems with the SCRAM Bracelet or SCRAM Modem, I agree to inform my Contact Person immediately. If there has been an electrical power or telephone interruption of service affecting my reporting, I agree that I will call my Contact Person as soon as practicable.

If I am unable to personally reach my Contact Person, I agree to leave notification on the Contact Person's message service or by other documented means. I will include my name, date, time, and the nature of my problem.

I agree to not participate in the following restricted activities, and understand that a violation of any of these provisions constitutes a violation of this Agreement:

- or _____ **No Drugs** -- I agree that I will not possess or consume any controlled drug substance or marijuana, nor will I knowingly be present where other persons are doing so.
- _____ **No Alcohol** -- I understand that I am not to consume, use or possess any product containing alcohol, including, but not limited to: alcoholic beverages, mouthwash, medicinal alcohol, household cleaners and disinfectants, lotions, body washes, perfumes, colognes, or other hygiene products that contain alcohol.
- _____ **No Bars** -- I agree I will not enter any bar or other establishment where alcohol is offered for sale and consumption on the premises.
- _____ **Tampering** -- I agree to not use the above banned products near the SCRAM bracelet in an attempt to tamper with or alter its readings.
- _____ **Swimming & Bathing** -- I understand that I am not to submerge the SCRAM Bracelet in water. Showers are the only permitted bathing method.
- _____ **Personal Hygiene** - I agree when bathing I will thoroughly rinse with clean water and dry underneath the SCRAM Bracelet. I understand that failure to rinse away all soap may result in a mild skin rash.

Current Health Status Pre-existing Medical Conditions—To determine whether I am eligible to wear the SCRAM Bracelet, I agree I will reveal my current health status to my Contact Person and will also notify them of any pre-existing medical conditions that I am aware of such as pregnancy, diabetes or any type of known skin disorder or condition. **If I experience a burning sensation, rash on my skin or any other apparent health risk from the SCRAM Bracelet, I will contact my Contact Person immediately. If I must remove the SCRAM Bracelet for health risks, I will cut the front of the bracelet strap where it says "Cut Here."**

I understand that my Contact Person will use telephone calls, the SCRAM equipment, and personal visits to monitor my compliance with this Agreement. Therefore, when I am at home, I agree to promptly answer my telephone or door. I further understand and agree that all telephone calls between my Contact Person and me may be tape-recorded.

I understand that my failure to comply with this Agreement or the instructions of my Contact Person will be considered a violation of the order or directive placing me in the Program and may result in adverse legal consequences, including my incarceration. Should I violate any of the conditions of this Agreement, or should an alcohol or tamper alert be generated by the SCRAM equipment, I understand that I will be reported and if authorized under the placement order or directive, I may be detained, immediately taken into custody and held without bond until the matter can be brought before one of the judges of the Judicial Circuit captioned above or as otherwise provided by state law.

I understand that information regarding my participation in this Program, including my enrollment, reporting, test results, and payment of fees, will be placed in a reporting system that is operated by the Attorney General's Office and may be accessed by state and local agencies associated with my placement in the Program.

ACKNOWLEDGEMENT

I, _____, hereby acknowledge that I have read this Participation Agreement and understand its terms. I agree to comply with each of the conditions of my participation in the 24/7 Sobriety Program.

DATED: _____

Participant's signature

Witness' name and title (please print or type)

Witness' signature